Remarks/Arguments

Claims 1-28, 30-34, 51-68, and 89-95 are pending in the application. All claims stand rejected. Claims 32-34, 52, 56, 59,61, and 68 are canceled by this amendment without prejudice. Claims 1-6, 8-11, 13-20, 22-24, 51, 62-67, and 89-90 have been amended. The amendments are clarifying in nature, and no new matter has been introduced by the amendments.

Claim Rejections Under 35 USC 112

Claims 1-34, 51-68, and 89-95 are rejected under 35 USC 112, first paragraph, as failing to comply with the enablement requirement. The Examiner considers the use of the terms "and/or" and "at least two" to give rise to various permutations that would require undue experimentation to reproduce. Applicant respectfully traverses the Examiner's assertions.

Under *In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971), "it is incumbent upon the Patent Office, whenever a rejection on this basis is made, to explain why it doubts the truth or accuracy of any statement in a supporting disclosure and to back up assertions of its own with acceptable evidence or reasoning which is inconsistent with the contested statement. The present invention is intended to cover multiple permutations of the modules that are claimed. Each module is well-defined in the specification and operates as a discrete unit that can receive or pass data in a through-flow process to other units. Using the teachings of the present invention, persons skilled in the art could implement any permutation without undue experimentation. In the art, it is well-known how to enable distinct software modules to interact using principles of object oriented programming, for example. This shows that there is in fact substantial predictability in the art, in contrast to other arts, such as chemistry, where multiple permutations of chemical compositions are not necessarily reproducible from a limited number of working examples. As stated in MPEP § 2164.03:

Page 15 - RESPONSE TO OFFICE ACTION DATED DECEMBER 9, 2003
S rial No. 09/538,570

A singl embodiment may provide broad   nablement in cases involving predictable factors, such a mechanical or l ctrical l ments. *In re Vickers*, 141 F.2d 522, 526-27, 61 USPQ 122, 127 (CCPA 1944); *In re Cook*, 439 F.2d 730, 734, 169 USPQ 298, 301 (CCPA 1971). However, in applications directed to inventions in arts where the results are unpredictable, the disclosure of a single species usually does not provide an adequate basis to support generic claims. *In re Soll*, 97 F.2d 623, 624, 38 USPQ 189, 191 (CCPA 1938). In cases involving unpredictable factors, such as most chemical reactions and physiological activity, more may be required. *In re Fisher*, 427 F.2d 833, 839, 166 USPQ 18, 24 (CCPA 1970) (contrasting mechanical and electrical elements with chemical reactions and physiological activity). See also *In re Wright*, 999 F.2d 1557, 1562, 27 USPQ2d 1510, 1513 (Fed. Cir. 1993); *In re Vaeck*, 947 F.2d 488, 496, 20 USPQ2d 1438, 1445 (Fed. Cir. 1991). This is because it is not obvious from the disclosure of one species, what other species will work.

(Emphasis added.)

Accordingly, the mere fact that multiple permutations are possible in Applicant's computer implemented invention is an inadequate reason on its own to sustain a non-enablement rejection. See also *In re Wands*, 858 F.2d 731, 8 USPQ2d 1400 (Fed. Cir. 1988). Under in re Wands, the Examiner must support the rejection based on consideration of at least the following factors: (1) the breadth of the claims; (2) the nature of the invention; (3) the state of the prior art; (4) the level of one of ordinary skill; (5) the level of predictability in the art; (6) the amount of direction provided by the inventor; (7) the existence of working examples; and (8) the quantity of experimentation needed to make or use the invention based on the content of the disclosure. The Examiner has not presented any argument or evidence under any one of the foregoing factors. Therefore a prima facie case of non-enablement has not been made in accordance with *In re Wands*, and the rejections must be withdrawn or evidence provided. For reasons unrelated to the rejections, Applicant has amended the claims, eliminating uses of the "and/or" and the recitation of the statistical analysis module.

Claims 1-34, and 51-68 are rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims have been amended to better define the

invention. Among other things, the am ndments remove unnecessary limitations and improve the clarity of the claim. The words "and/or" are no longer used in the preamble and certain other locations.   In view of the amendments, the rejection is moot and should be withdrawn.

Claim Rejections Under 35 USC 101

Claims 1-34, 51-68, and 89-95 are rejected under 35 USC 101 on grounds that the Invention is directed to non-statutory subject matter. Applicant respectfully traverses the rejections. The Examiner asserts that the claimed inventions do not produce a concrete or tangible result in view of the number of permutations being claimed. To the extent the rejections are based on the assertion of undue experimentation, Applicant reasserts its position above. Further, each permutation uses at least two or more processing modules. Each module is described as producing a concrete and tangible result. For example, the smoothing of data or the indication to users of activity levels at network sites using the physical system that is configured to present (output) the result. The method claims have been amended to recite that the methods are "computer implemented". Therefore, each permutation provides various combinations of concrete and tangible results. These results are then presentable or presented via the systems, methods, and servers claimed. Therefore, all claimed inventions necessarily have utility.

Claim Rejections Under 35 USC 102

Claims 1-3, 8-11, 13-15, 19, 23, 32-34, 51-56, 61, 62, 64-66, and 89-93 are rejected under 35 USC 102(e) as being anticipated by Papierniak et al. The Examiner asserts that Papierniak discloses a statistical analysis processing module and a dynamic activity level icon processing module. Applicant respectfully traverses the rejections in view of the amendment deleting the statistical analysis process module from the group of modules from which a

Page 17 - RESPONSE TO OFFICE ACTION DATED DECEMBER 9, 2003
Serial No. 09/538,570

selection is made. Further, Applicant also traverses the rejections because Papierniak does not disclose a dynamic activity-level processing module as recited in the claims. The Examiner states that the information from the tracking module 300 may be presented to a user via a personalized user interface and that this corresponds to iconically indicating to the user of a remote of a remote computer system a level of activity at a predetermined network site. The sections cited by the Examiner are vague and very general and do not include any details as to, for example, what specific information is presented, how it is caused to arrive at an interface, or how it is presented on the interface. In contrast, after amendment, claim 1 recites a "dynamic activity-level icon module for iconically indicating to the user of a remote computer system **relative** levels of activity **at network sites for different merchants offering competitive goods or services."** Similarly, claims 8, 51, 89 and 90 have been amended to recite "a dynamic activity-level icon module for iconically indicating to the user of a remote computer system a level of activity at **each of a plurality of merchant network sites, the module automatically causing the indication of activity to be sent to the remote computer system upon user access to an electronic page comprising a listing of a plurality of merchants".** These specific details are not disclosed in Papierniak alone or in combination with any other reference. Support for the amendment is found, for example, on page 70 of Applicant's specification.

In view of the foregoing, all claims are patentably distinct over Papierniak and should be allowed.

Claim Rejections Under 35 USC 103

Claims 4-7, 17, 18, 20-22, 24-28, 30, 31, 57-60 are rejected under 35 USC § 103(a) as being unpatentable over Papierniak et al (6,128,624) in view of Decker (6,430,305), in further

Claim Rejections Under 35 USC 103.

Claims 4-7, 17, 18, 20-22, 24-28, 30, 31, 57-60 are rejected under 35 USC § 103(a) as being unpatentable over Papierniak et al (6,128,624) in view of Decker (6,430,305), in further view of Abu El Ata (6,560,569). For the reasons given above, Applicant has distinguished over Papierniak, which is the primary reference for the rejections under § 103. Therefore the § 103 are traversed for at least this reason. Further, the § 103 rejection would have been traversed for other reasons. First a prima facie case of obviousness has not been established by citing to some teaching or suggestion in the references themselves for the combinations. *In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).* Second, all recited limitations of the claim have not been identified in the prior art. "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).* This has not been done relative to the data stabilizer, the saturation limited forecasting module, or the alarm filter.

The data stabilizer of the present invention calls for "using a computational solution of a minimum variance Bayesian estimation method". The Examiner has not explained how the mere reference to a Bayesian method in Decker equates to the Bayesian method as characterized in the claims. Further, Decker expressly teaches against the use of Bayesian methods: "However, typically [Bayesian] probability estimates will not be completely independent, so regression that better handle correlated inputs are preferred." (Col. 4, lines 34-36.) Still further, Decker does not speak in terms of smoothing variable data only at arriving at a "best guess". Still, Decker does not speak in terms of smoothing noisy or variable data, only of at arriving at a best guess of a probability for risk assessment purposes. This is a completely different and distinct use of algorithm statistics relative to the use recited in the claims. For any of the foregoing reasons, the rejections premised on Decker are traversed.

Page 19 - RESPONSE TO OFFICE ACTION DATED DECEMBER 9, 2003
Serial No. 09/538,570

as th basis of any algorithm. Nor does it speak of any algorithm that defines growth of a population to a maximum attainable level. For any of the foregoing reasons, the rejections premised on Abu El Ata are traversed.

The claims directed to the alarm filter recite that "alarm filter module for monitoring data rates and sending a signal based on deviations from desired thresholds from a normative rate." The Examiner asserts that computational results in Abu El Ata correspond to "data rates". It is unclear to Applicant how a computational result can be considered a data rate, as claimed. The Examiner has not given any reason why the terms would be considered synonymous and submits that they are not. The Examiner must submit a declaration or other evidence if the rejection is to be maintained. MPEP § 2144.03 Furthermore, even if the terms can be established as equivalent, the Examiner did not identify where in the prior art there is "a sending a signal based on deviations from desired thresholds from a normative rate." For any of the foregoing reasons, the rejections must be withdrawn.

Claims 12, 16, 63, 67, 68, 94, and 95 were rejected based on Papierniak in view of Sundaresan. Claims 12 and 68 have been cancelled without prejudice.

The rejection of these claims is traversed in view of the traversal of the rejections based on Paperniak and in view of the claims traversed in amendments.

Submitted herewith is Rule 1.131 Declaration swearing behind Sundaresan; removing it as a reference. Applicant reserves the right to swear behind Darbee and any other cited reference in the Office action. In view of the swear behind, claims 16, 43, 67, 94, and 95 are in condition for allowance and favorable action is requested.

In view of the foregoing reasons for distinguishing over the cited references, Applicant has not raised other possible grounds for traversing the rejections, and therefore nothing herein should be deemed as acquiescence in any rejection or waiver of arguments not expressed herein.

Page 20 - RESPONSE TO OFFICE ACTION DATED DECEMBER 9, 2003
Serial No. 09/538,570

CONCLUSION

Applicant submits that in view of the foregoing amendments, the application is in condition for allowance, and favorable action is respectfully requested. The Commissioner is hereby authorized to charge any fees, including extension fees, which may be required, or credit any overpayments, to Deposit Account No. 50-1001.

Respectfully submitted,

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